

REMARKS

The present Amendment is in response to the Office Action dated August 22, 2005 in reference to the above-identified application. The Examiner has set a shortened statutory period for response to this action to expire three (3) months from the mailing date of the communication, making the present Amendment due by November 22, 2005.

In that Office Action, claims 1-8 and 10-39 were pending. Of these, applicant notes with appreciation the allowance of claims 12-30, 38 and 39. Moreover, applicant notes with appreciation the Examiner's indication that claims 2, 3, 11, 22 and 34 contain allowable subject matter.

Of the remaining claims, claims 1, 4, 5, 10 and 31 were rejected as anticipated by U.S. Patent No. 5,000,780 to Tokunaga under 35 U.S.C. §102(b). Claims 6 and 35-37 were rejected as obvious over Tokunaga. Claims 7, 8, 32 and 33 were rejected under 35 U.S.C. §103(a) as obvious over Takunaga in view of Muhmel et al. (DE 197 53 956).

The Tokunaga reference discloses a fragrance emitting metal which may be incorporated into an accessory, such as a necklace or other jewelry, adapted to be worn by a person. Specifically, Tokunaga is directed to a method of producing the fragrance emitting metal. However, with respect to an article jewelry, Tokunaga teaches a necklace that includes a loop to which an annular setting is secured. A disc-shaped piece of sintered metal made according to the disclosed method is mounted within the annular ring generally in the plane of the annular setting. The piece of metal has a lower surface that is planar with the lower edge of the annular ring and an upper surface that is close to, but not quite in the plane of the upper edge of the annular ring (See Figure 2). The piece of metal is adapted to have a

fragrance diffused therein, and it is disclosed that the purpose is to avoid allergic reactions of a person to perfume and the like. However, due to this configuration wherein the lower surface of the piece of metal is co-planar with the lower edge of the annular ring, the lower surface of the piece of fragrance carrying metal could actually contact the skin of the wearer. Even such limited contact could still result in an allergic reaction.

The Examiner has also rejected independent method claim 31 and its dependant claims 32, 33 and 35-37 over the Tokunaga reference. While Tokunaga does disclose that the piece of metal can be infiltrated with perfume or other fragrance, there is simply no teaching in Tokunaga of how to remove the fragrance so that the accessory can be reused with a different fragrance.

The piece of jewelry claimed in independent claim 1 includes a securement member adapted to be releasably secured to a portion of a person's body or clothing. A setting supported by said securement member. A piece of porous having sufficient porosity to permit penetration thereof by the carrier liquid and the fragrance emitting substance is affixed to the setting. This piece of porous material has a top surface and a bottom surface opposite said top surface. The piece is mounted so that such that ambient air can flow about at least a portion of both the top and bottom surfaces.

By this amendment, applicant has amended claim 1 to recite that the setting includes a base and that the piece of porous material piece of jewelry is affixed to the base of the setting so that the piece of porous material is in spaced-apart relation to the base and at a orientation relative to said securement member such that ambient air can flow between the base and the piece of porous material.

This structure is not found in the Tokunaga reference. It has the advantage of reducing the likelihood of unwanted contact between the perfume carrying piece of porous material and the skin of the wearer. While it is known to mount pieces of jewelry in spaced relation to the base of a setting, it would not be obvious to incorporate such structure with Tokunaga since Tokunaga does not recognize this problem associated with the structure disclosed therein or the value of having ambient air circulate over portions of both surfaces. Accordingly, to combine Tokunaga with such setting would be hindsight based on the teaching of the present application.

As to independent method claim 31, Tokunaga simply does not teach the step of removing the scent of a fragrance from the sintered metal disclosed therein by any processing step. Applicant has developed this step so that his piece of jewelry can be reused with either the same fragrance or a different fragrance. This step is not found or inherent in Tokunaga, and, since this is a recited step in applicant's method, a rejection under 35 U.S.C. §102(b) is improper.

Moreover, Tokunaga simply does not disclose any reuse of the necklace with the piece of sintered metal. Tokunaga may well intend that the sintered metal receive the only one type of fragrance. Therefore, there would be diminished need to remove a prior scent so that the user could, if desired, use a different fragrance for another occasion. Tokunaga is silent as to this issue.

Nonetheless, applicant has amended claim 31 to recite that the removal of the scent is accomplished by washing the piece of porous material in an alcohol to even more clearly distinguish his method from any disclosed in Tokunaga. Accordingly, claim 35 has been canceled.

In addition, while preparing this response, applicant noted an antecedent issue in paragraph (c) relative to "the carrier liquid". Therefore, applicant has amended paragraph (a) to correct this minor matter and not for purposes of distinguishing any prior art.

Based on the, Applicant submits that claims 1 and 31 are allowable over the applied references. Likewise, their respective dependent claims should be allowable.

No additional claims fees are believed to be payable upon the Amendment. However, the Commissioner is hereby authorized to charge any deficiency in the required fees, or to credit any overpayment, to deposit account number 13-1940.

Based on the foregoing, Applicant submits that the present application is in complete condition for allowance, and action to that end is courteously solicited. If any issues remain to be resolved prior to the granting of this application, the Examiner is requested to contact the undersigned attorney for the Applicant at the telephone number listed below.

Respectfully submitted,

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CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8

I hereby certify that the foregoing **AMENDMENT (13 pages)** is being deposited with the United States Postal Service as first-class mail in an envelope addressed to Mail Stop Non Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 25 day of November, 2005.

Marcie F. King
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